

Adoption

Adoption Laws & Legal Precedents

Same-sex domestic companions cannot get married and, therefore, cannot enjoy many of the benefits associated with marriage. They cannot file a joint tax return and, typically, one companion cannot join the other's health-insurance plan or get the other's pension benefits. If a companion became comatose in the hospital, the other companion could be denied visitation rights.

When domestic companions choose to have children, they face additional potential problems. For instance, if the biological parent dies, a court could grant guardianship over the children to a "blood" relative instead of the non-biological parent, even if the non-biological parent has raised the children from birth. An employer of the non-biological parent can choose not to offer health insurance to the parent's children. If a non-biological parent dies, the children may not be entitled to receive social security benefits. If the same-sex companions separate, the non-biological parent could be denied custody or visitation rights.

Same-sex partners have explored many options in an attempt to give their families the same benefits enjoyed by families with opposite-sex parents. Same-sex parents may choose to list both the biological and the non-biological parent on the children's birth certificate and to execute mutual wills. A biological parent can try to appoint the non-biological parent as the guardian of the children in the event of death or disability. Some same-sex parents can choose to draft a "co-parenting agreement" which reflects the couples' intention to jointly and equally provide for the support of the children. In addition, same-sex parents may choose to confer on each other durable medical and financial powers of attorney, and the biological parent may execute durable powers of attorney for the children, designating the

non-biological parent as agent for purposes of exercising parental decisions.

These options may provide some degree of comfort to same-sex companions and their children; however, the only legal procedure which truly insures that the children of same-sex parents have security and protection of two legally recognized parents is adoption. In adoption proceedings, courts typically rely on: 1) the law of their respective jurisdiction; and, 2) their perception of what course of action represents the "best interests" of the child. In Colorado, the adoption act can be found within the Children's Code, C.R.S. 19-1-101 et seq.

Section 19-5-202 clarifies that a person who is twenty-one years of age or older may seek to adopt. Section 19-5-203 identifies the circumstances under which a child may be available for adoption. It states, in relevant part, that a child may be available for adoption upon: 1) order of the court decreeing the voluntary relinquishment of the parent-child legal relationship under section 19-5-103 or 19-5-105; or 2) written and verified consent of the parent or parents as defined in section 19-1-103(21) in a step-parent adoption where the child is conceived and born out of wedlock. Section 19-5-211 explains that once a child is adopted, the biological parent will lose all legal rights and obligations with respect to the child unless the adopting parent is a "step-parent" and is married to the biological parent.

Relying on the above law, Colorado courts have been split on whether the non-biological parent in a same-sex relationship can adopt children conceived by the biological parent, without the biological parent losing her parental rights. In Boulder County, for instance, a district court judge ruled in a recent case that the "best interests" of the children were served by allowing a non-biological lesbian parent to

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legally adopt the two children conceived by her partner. At the time of the ruling, the couple had been in a relationship for over nine-and-a-half years, and had mutually raised and supported the children. Both the biological and the non-biological parent were listed on the children's birth certificate and the parents had executed mutual wills. The biological parent had appointed the non-biological parent as the guardian of the children, and the parents had drafted a "co-parenting agreement." The court noted that the adoption act does not address situations where children are born out of wedlock as a result of artificial insemination. The court explained that to reserve the overriding purpose of the adoption act — to protect the best interests of the children — it must treat the adoption petition as within the scope of the "step-parent exception," and thus the biological parent did not need to relinquish her parental rights in order for the non-biological parent to adopt. *In re Adoption Petition of K.H. and R.Z.*, Colo. Dist Ct. Boulder Cty., No. 95-JA-49 (July 26, 1995).

On the other hand and in a similar case, a district court judge in Jefferson County reached the opposite conclusion, and the Colorado Court of Appeals recently upheld the county

court decision. In this case, each partner conceived a child, and then attempted to adopt the other partner's child. The court, relying on a very narrow and literal interpretation of Colorado's adoption statutes, determined that, since same-sex partners were not married to each other, neither could consent to the adoption of her child by the other without terminating the parent-child relationship. Unlike the Boulder County court, the district court and appellate court never even considered the "best interests" of the children, a disturbing fact pointed out by a concurring judge on the appellate court. *In re Adoption Petition of G.K. and L.J.*, Colo. Ct. App, No. 95-CA-0531 (June 13, 1996). The concurring judge felt compelled to agree with the decision based on the literal language of section 19-5-211, C.R.S.. However, the judge stated that "good parents who are willing and able to undertake the substantial responsibility and nurturing required in child rearing should receive legal recognition without regard to whether a marriage is involved." As a result of the Court of Appeals decision, adoptions by same-sex parents will likely not be upheld in lower courts until, and if, the Colorado Supreme Court rules otherwise.



Resource List:

▼Polikoff, *This Child Does Have Two Mothers; Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 Geo. L.J. 459, 464-68 (1990).

▼Comment, Zuckerman, *Second Parent Adoptions for Lesbian-Parented Families; Legal Recognition of the Other Mother*, 19 U.C. Davis L.Rev. 729 (1986).

▼Ettelbrick, *Who is a Parent?: The Need to Develop a Lesbian Conscious Family Law*, 10 N.Y.L. Sch. J. Of Hum. Rts. 513 (Spring 1993).